



**H Young & Company (EA) Limited v Momanyi (Appeal E014 of 2025)
[2025] KEELRC 2481 (KLR) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2481 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E014 OF 2025
JW KELI, J
SEPTEMBER 18, 2025**

BETWEEN

H YOUNG & COMPANY (EA) LIMITED APPELLANT

AND

HANDSON MBAKA MOMANYI RESPONDENT

(Being an Appeal from the Ruling and Orders of the Hon. L. Ambasi (CM) delivered on 11th December, 2024 in MCELRC Miscellaneous Application number E006/2024)

JUDGMENT

1. The Appellant herein, being dissatisfied with the Ruling and Orders of the Hon. L. Ambasi (CM) delivered on 11th December, 2024 in MCELRC Miscellaneous Application number E006/2024 between the parties filed a memorandum of appeal dated the 17th of January 2025 seeking the following orders:-
 - a. The appeal be allowed and Ruling and Orders of lower court be set aside.
 - b. The Respondent's application in the lower court be struck out.
 - c. The costs of this appeal and the lower court be borne by the Respondent herein.

Grounds Of The Appeal

2. The Honourable Trial Magistrate erred in law and in fact in holding that the Magistrate's Court has jurisdiction in matters seeking adoption of the award of the Director of Occupational Safety and Health.
3. The Honourable Trial Magistrate erred in law and in fact in proceeding to adopt the award of the Director of Occupational Safety and Health.



4. The Honourable Trial Magistrate erred in law and in fact in failing to consider and give due weight to the Appellant's documentary evidence.
5. The Honourable Trial Magistrate erred in law and in fact in failing to give due weight to the Appellant's written submissions and authorities.
6. The Honourable Trial Magistrate erred in law and in fact in awarding costs and interest to the Respondent.

Background To The Appeal

7. The Respondent filed a miscellaneous application against the Appellant vide a Notice of Motion dated the 11th of April 2024 seeking the following orders:-
 - a. This Honourable Court be pleased to adopt the award made by the Director of Occupational Safety and Health Services in favour of the Applicant as an order of the court.
 - b. A decree be issued in accordance with the award/assessment of the Director of Occupational Safety and Health Services for the sum of Kshs. 812,509.48.
 - c. Interest on (b) above at Court rates from the date of the Director's award till full payment.
 - d. Costs of the application be borne by the Respondent.
 - e. Any other relief as this Honourable Court deems just and equitable.(pages 3-5 of Appellant's ROA dated 22nd April 2025).
8. The Respondent filed his supporting affidavit sworn on 11th April 2024, and annexures thereto alongside the notice of motion (see pages 6-11 of ROA).
9. The application was opposed by the Appellant, who appeared and filed a replying affidavit dated 15th May 2024, challenging the jurisdiction of the court to hear the matter (pages 12-17 of ROA).
10. The court issued directions that the preliminary objection and application be disposed of by way of written submissions. The parties complied (pages 18-32 of ROA)
11. The Trial Magistrate Court delivered its ruling on 11 December 2024, dismissing the Appellant's challenge to its jurisdiction, and granting the Notice of Motion dated 11 April 2025 (ruling at pages 35-38 of ROA).

Determination

12. The appeal was canvassed by way of written submissions. Both parties filed.
13. This being a first appellate court, it was held in *Selle v Associated Motor Boat Co.* [1968] EA 123 that:-

"The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon which the Court of Appeal acts are that the court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular the court is not bound necessarily to follow the trial Judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally."



14. Further in on principles for appeal decisions in Mbogo V Shah [1968] EA Page 93 De Lestang V.P (As He Then Was) Observed At Page 94:

“I think it is well settled that this court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”

Issues for determination

15. In their submissions dated the 29th of July 2025, the Appellant identified one issue for determination:-
- i. Between the ELRC and the Magistrate’s Court, which one has jurisdiction to adopt awards by the Director of Occupational Safety and Health (DOSHS).
16. Conversely, the Respondent identified the following issues for determination in his submissions dated the 1st of July 2025.
- i. Whether the learned Magistrate properly assumed jurisdiction to recognize and adopt the Director’s award for purposes of enforcement.
 - ii. Whether, in law and in principle, the right to compensation under the [Work Injury Benefits Act](#), 2007, can exist without an enforceable remedy for its realisation.
 - iii. Whether a finding that the Magistrate’s Court lacked jurisdiction to adopt the Director’s award negates the validity of the award itself, or merely necessitates enforcement before the proper forum; and if so, whether this Honourable Court, being seized of the matter and the record, may proceed to adopt the award in the interest of substantive justice.
17. Taking into account the submissions of the parties and the grounds of the appeal the court finds that the issue for determination is whether the Trial Magistrate’s Court had jurisdiction to adopt the award by the Director of Occupational Safety and Health (DOSHS).

Whether the Trial Magistrate’s Court had jurisdiction to adopt the award by the Director of Occupational Safety and Health (DOSHS).

18. The appeal arose from the ruling of the trial magistrate court that it had jurisdiction to adopt the award of DOSHS, following an application by the respondent. This position had been objected to by the appellant through its replying affidavit (pages 13 to 17 of the ROA). The appellant relied on the decision of the Court of Appeal in Charles v Cheto (civil appeal no. E046 OF 2022) 2025 e KLR, where the court held that the jurisdiction to adopt the award was with the Employment and Labour Relations Court and relied on paragraphs 44 and 48 of the decision.
19. Conversely, the respondent relied on several decisions including Charles v Cheto of Court of Appeal to submit the trial court had jurisdiction.
20. The trial court in its decision relied on the decision in Joash Shisia Cheto v Thepot Patrick Charles (2022)e KLR to hold it had pecuniary jurisdiction to adopt DOSHS awards.
21. The impugned ruling arose from an application by way of Notice of Motion dated 11th April 2024, where the respondent sought the enforcement of the award of DOSHS for the sum of Kshs. 812509.48.



It was undisputed that there was no appeal preferred by the appellant on the award within 90 days of the decision. The only issue then was enforcement.

22. It was undisputed that there is lacuna in law on enforcement of DOSH awards. It is maxim of equity that equity will not suffer a wrong to be without a remedy. The *Work Injury Benefits Act*, 2007, does not provide for the court to enforce the assessment awards by the Director. The trial court relied on the decision of the court (Manani J) in *Joash Shisia Cheto Versus Thepot Patrick Charles* [2022] e KLR, where the Learned Judge found that the court's decided cases were to effect that the court had jurisdiction to adopt the awards under its inherent jurisdiction and in only one case he found the court was held not to have jurisdiction. The Judge found that there were decisions to effect that the magistrates could adopt the awards where the pecuniary jurisdiction allowed. In this case the monthly salary of the respondent was Kshs. 53,836 (page 11 of the ROA). The magistrate applying the decision of the court held she had jurisdiction and adopted the award.
23. The Court of Appeal has since determined appeal against decision in *Joash Shisia Cheto Versus Thepot Patrick Charles* [2022] e KLR under *Charles v Cheto* (Civil Appeal E046 of 2022) [2025] KECA 784 (KLR) (9 May 2025) (Judgment). The Court of Appeal established the forgoing as relates the jurisprudence on adopting of awards by DOSH by reproducing the decision of the court at paragraph 52- 'The general position established by a majority of these decisions is as follows: -
 - a. The law does not provide for mechanisms of enforcing the Director's award against a reluctant employer.
 - b. In the face of this lacuna, the holder of the award can move the court to seek for enforcement of the award. A majority of the decisions favour the view that the ELRC can be moved for this purpose pursuant to its jurisdiction under article 162 of *the Constitution* as read with section 12 of the ELRC Act. Only one decision holds the view that the ELRC cannot be moved for this purpose. A few share the view that the Magistrate's court may be moved where pecuniary jurisdiction allows.
 - c. The proceedings for enforcement may be in summary form by way of miscellaneous causes or in the form of ordinary causes but confined to matters of enforcement only.
 - d. Unless by way of appeal under section 52 of the WIBA, it is not open to the court to consider the merits of the Director's award or indeed go on a fact finding mission. This jurisdiction is the preserve of the Director" The court then held- '54. Applying the principles in paragraph 51 to the case before me, it then becomes clear that the factual contestations before me in so far as they were not raised through an appeal under section 52 of the WIBA or Judicial Review, are not matters I should delve into. I will therefore do the only thing I ought to do in the cause: adopt the Director's award" The Court of Appeal on other issues raised by the appellant of not being employer among others held-'In this case, the learned Judge correctly observed that sections 51 and 52 of the WIBA are silent on the avenues for redress for a party who becomes aware of the proceedings before the Director after the time for lodging an objection and/or filing an appeal against the Director's decision has already lapsed. We agree with the learned Judge that the solution in such circumstances would be to lodge a Motion for Judicial Review to quash the award before adoption by the court, and on first seeking to have the adoption proceedings stayed. Notably, the appellant sat back and took no steps to that end.
24. The remedy identified by the learned Judge appears to be the only viable course of action in the circumstances. The appellant, who took no steps to seek judicial review of the Director's award, was misdirected in seeking to present a case for what he misperceived as breach of his constitutional right to a fair hearing, a claim that came too late in the day. Likewise, any attempt to seek leave of the ELRC



to file objection proceedings out of time, and to stay adoption proceedings pending the intended objection, would also amount to a futile attempt to invoke the court's jurisdiction, which only arises on an appeal against a Director's written reply to an objection. In the present case, the respondent's suit was essentially in the nature of adoption proceedings, which stood to succeed in the absence of any objection by the appellant to the Director's award.

25. The appellant's disaffection with the Director's decision on the ground that he was not the respondent's employer, and therefore not liable; that he had not been notified of the proceedings before the Director; and that, therefore, his right to a fair hearing were violated, were misplaced. Such grounds can only find relevance in an appeal contemplated in section 52(2) of the WIBA by way of judicial review of the Director's decision.
26. Even though the appellant further alleged that he was notified by the respondent's advocates of the Director's award dated 5th September 2019 after the time for appealing the same had lapsed, his remedy still lay in orders staying the respondent's suit, and in filing a judicial review motion to quash the Director's award. He failed to do so despite his advocates having received a copy thereof via email from the respondent's counsel on 26th January 2021; and despite the respondent proceeding to seek adoption of the Director's award in the suit filed on 18th March 2021. In view of the foregoing, we find no fault in the learned Judge's decision to adopt and pave way for enforcement of the award." The Court of Appeal then observed- 'As the learned Judge correctly observed, there is a lacuna in the law with regard to the procedure for enforcement of the Director's decision in that there is no express provision of the WIBA stipulating the procedure for enforcement. Be that as it may, Employment and Labour Relations Courts have aptly held that enforcement of the Director's decisions properly lies with the ELRC as the court with the jurisdiction to deal with employment and labour relations claims and for connected purposes.'
27. The court was of the considered opinion that the Court of Appeal in *Cheta v Charles* did not overrule the position that where pecuniary jurisdiction allows, the Magistrate Court with pecuniary jurisdiction and so gazetted may enforce the award by DOSH as per the established general principle under paragraph 52 of the appealed decision by Manani J. The jurisdiction of the appellate court is to be exercised cautiously as guided in *Mbogo V Shah* [1968] EA Page 93 De Lestang V.P (As He Then Was) Observed At Page 94:-

"I think it is well settled that this court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion."

In the instant case there was a lacuna in the law on the enforcement of decisions of the Director under WIBA. There was a valid award by DOSH of which no appeal had been preferred and the time (90 days of Decision under section 52 of WIBA) for doing so had since lapsed. The Learned Magistrate applied the decision of the court which was upheld by the Court of Appeal in *Charles v Cheto*. The matter was within the pecuniary jurisdiction of the trial court. The Court holds that the Learned Trial Magistrate was exercising her jurisdiction under the court as Gazetted by Chief Justice Hon. Maraga(as he then was). For the foregoing reasons, I was not satisfied that the decision is clearly wrong, either because the Learned Trial Magistrate misdirected herself or because she acted on extraneous matters and in doing so arrived at a wrong conclusion. (*Mbogo v Shah*).



28. In the upshot, the Ruling and Order of the Hon. L. Ambasi (CM) delivered on 11th December 2024 in MCELRC Miscellaneous Application number E006 of 2020 is upheld with costs of appeal awarded to the respondent.

29. It is so ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 18TH DAY OF SEPTEMBER, 2025.

**J.W. KELI,
JUDGE.**

In The Presence Of:

Court Assistant: Otieno

Appellant – absent

Respondent: Ms. Bonyo

